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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,164	01/20/2004	Richard L. Weaver	433-11US	6642
23716	7590	12/13/2006	EXAMINER	
ANTHONY ASQUITH 28-461 COLUMBIA STREET WEST WATERLOO, ON N2T 2P5 CANADA			ALIMENTI, SUSAN C	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 12/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/759,164

Applicant(s)

WEAVER, RICHARD L.

Examiner

Susan C. Alimenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6 and 17-21 is/are rejected.
- 7) ☒ Claim(s) 7-16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In subparagraph [16] in claim 1, the phrase “of such form and robustness and is so mounted, that. . . liquid entering the tray-chamber substantially cannot form pools,” is vague and indefinite. It is unclear exactly what the applicant claims as his invention and what are the metes and bounds of the claim. More specifically what does “such form,” “[such] robustness,” and “so mounted” attempt to define; and what in this vaguely recited structure causes the tray chamber to not “form pools?” It is noted that claim 4 appears to properly recite what the above portion of claim 1 attempts to recite.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4, 6, 17, 18, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collis (USPN 1,192,867), and further in view of in view of Sheaffer et al. (US 5,349,923).

Collis discloses a device for holding and transporting poultry comprising a cage having a support framework of uprights 1 and cross-members 3, 4, 5, & 6, that are fixed together in an open rectangular configuration. The cage may be stacked on a truck in a variety of configurations, e.g. one is laid down on a side and another is stacked there upon, and is sturdy, standalone and physically capable of being picked up as a unit and being placed on a truck. The cage is configured to define individual tray chambers defined by left, right, and rear lattice side panels, a floor panel and a front door 18. The floor panel is defined as the combination of bottom portion 10 of the lattice wire mesh, and solid tray 15. Portion 15 of the floor panel extends from the rear to the front and side-to-side of the cage, and has no perforations.

While the floor is not made of plastic, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the floor of plastic, since it has been held to be within the skill of a worker in the art to select a known material based on its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. The limitations of material choice recited in claim 6 are similarly rejected.

Regarding the front door being pivotally mounted, it is noted that Collis' door slides in a vertical motion. Sheaffer discloses a similar structure for housing and transporting animals, however, Sheaffer teaches the use of a pivoting or swinging front door 230 (Sheaffer, Figure 15) allowing access to the interior. Further, the swinging door is well-known in the art of animal cages, and is an art-recognized equivalent to the sliding door disclosed by Collis. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute Collis' sliding door with Sheaffer's swinging door, since the two are art recognized equivalents structures for performing the same function.

Regarding claim 4, portion 15 of the floor panel is a one-piece molding and is supported by the framework so that the weight of the poultry on the device will not create deflection or pooling of water thereon.

Regarding claims 17, 20, and 21, Sheaffer's door is pivotally mounted and biased by spring hinge 232 in the closed position, and remains closed unless a force is applied against it, (Sheaffer, col.10, ll.62 to col.11, ll.4) such as the weight of the animals contained therein if the container were tilted.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Collis in view of Sheaffer as applied to claim 1 above, and further in view of Weaver (USPN 6,338,316).

Collis as modified discloses the claimed invention but it does not disclose that the floor panel is domed in shape. Weaver discloses a poultry cage with a dome shaped floor, and teaches that this dome shape increases the load bearing capacity of the floor, lessening the chance of bending or breaking. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Collis' cage by using Weaver's floor design in order to increase the structural integrity of the structure.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Collis in view of Sheaffer, as applied to claim 1 above, and further in view of Kuster (USPN 4,046,107).

Collis as modified discloses the claimed invention except it is not positively disclosed that the spaces between the wires in the mesh panels is of a sufficient width to resist snagging of

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the spurs/claws of the bird's feet. Kuster discloses a bird cage in the same field of endeavor that teaches a particular width between the wires that make up the lattice of the cage. Kuster teaches that this particular width prevents snagging or catching of the birds claws (Kuster, abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate Kuster's width into Collis' mesh in order to ensure that the bird's claws/feet do not get stuck or snagged in the mesh, thus lessening the chance of injury of the birds.

7. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Collis in view of Sheaffer as applied to claim 1 above, and further in view of Giordano et al. (US 6,851,389).

Collis discloses the claimed invention except there is no framework to support the cage structure on a forklift. Giordano discloses a similar poultry cage structure that teaches the addition of a forklift slot 5, allowing the user to move the structure with the ease of a forklift (Giordano, col.3, lns.25-28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to add a forklift slot to Collis's cage structure in order to facilitate movement of the structure with a forklift.

Allowable Subject Matter

8. Claims 7-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Response to Arguments

9. Applicant's arguments with respect to claims 1-4, and 6-21 have been considered but are moot in view of the new grounds of rejection.

Conclusion


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 571-272-6897.

The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Susan C. Alimenti


TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER